

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER ISSUED TO
JERM LTD. t/a NORTHSIDE MARKET
UST Facility at 911 Front Street, Lovington, VA
Facility Identification No. 6036799

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and 8(d) between the State Water Control Board and JERM Ltd. to resolve certain violations of the State Water Control Law and regulations at JERM Ltd.'s Underground Storage Tank Facility located at 911 Front Street in Lovington, Nelson County, Virginia.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. ABoard≡ means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. ACode≡ means the Code of Virginia (1950), as amended.
3. AUST≡ means underground storage tank.
4. "JERM Ltd." means JERM Ltd., t/a Northside Market, the UST owner within the meaning of Virginia Code § 62.1-44.34:8.
5. ADepartment≡ or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.

6. ADirector≡ means the Director of the Department of Environmental Quality.
7. AFacility≡ means the retail gasoline station and USTs owned and operated by JERM Ltd. located at 911 Front Street, Lovington, Nelson County, Virginia. The Facility=s USTs are further identified by UST numbers: 1, 2 & 3.
8. AOrder≡ means this document, also known as a Consent Special Order.
9. ARegional Office≡ means the Valley Regional Office of the Department.
10. ARegulation≡ means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.
11. “Sti-P3 tank” means a UST certified by the Steel Tank Institute to have three different methods of corrosion protection.
12. “Form 7530” means the UST notification form used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-60, requires that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. JERM Ltd. is the owner of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. On March 28, 2002, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:
 - a. Testing of the cathodic protection (CP) system installed on the USTs had not been performed in apparent violation of 9 VAC 25-580-90 ¶2.
 - b. Release detection was not being performed on the USTs and piping in apparent violation of 9 VAC 25-580-50 ¶6.

- c. UST notification information was incorrect in apparent violation of 9 VAC 25-580-70 ¶A.
- d. Financial assurance documentation had not been submitted to the DEQ in apparent violation of 9 VAC 25-590-10 *et seq.*

As a result of this formal inspection, DEQ staff sent a Warning Letter (No. 02-08-VRO-005) to JERM Ltd. on August 16, 2002, for these apparent violations of the Regulations. The letter requested that JERM Ltd. respond by August 26, 2002, and included a copy of the formal inspection results, detailing the apparent violations noted above. It also requested that JERM Ltd. contact DEQ to discuss resolution of noncompliance by way of a Letter of Agreement.

- 4. On October 17, 2002, having not received a response to the Warning Letter, DEQ staff telephoned JERM Ltd. inquiring about the lack of response. DEQ staff offered JERM Ltd. a second opportunity to enter into a Letter of Agreement with a compliance schedule, informed the owner of the potential Notice of Violation that could be issued for the alleged violations and faxed the owner a copy of the facility's current compliance status summary.
- 5. On both October 24, and November 1, 2002, JERM Ltd. and their contractor informed DEQ staff of their intent to begin using statistical inventory reconciliation (SIR) as their chosen method of release detection for both tanks and piping. Additionally, they informed DEQ that they had hired a third-party contractor to perform the necessary testing of the piping and cathodic protection system. The testing was scheduled for November 4, 2002.
- 6. On December 3, 2002, DEQ staff attempted and was unable to contact JERM Ltd. via telephone. DEQ staff left a voice message requesting a return call.
- 7. On January 23, 2003, having not received a response, DEQ staff telephoned JERM Ltd. inquiring about recently performed compliance testing. JERM Ltd. informed staff that the owner had all the test results and would mail copies of them to the DEQ.
- 8. On January 24, 2003, DEQ staff received documentation that was presented as test results from the performance of a November 11, 2002 cathodic protection system test. DEQ staff notified the contractor, via telephone, on February 25 and March 13, 2003, that the documentation did not meet the requirements for compliance with the Regulation.
- 9. DEQ staff contacted JERM Ltd., via telephone on February 10, 13 and 25, 2003 to inform the owner that the satisfactory compliance documentation the owner agreed to submit had

not been received, including documentation for release detection, cathodic protection system testing, UST notification form 7530 and financial assurance

10. On March 13, 2003, JERM Ltd.'s contractor contacted DEQ staff inquiring about the compliance status of the facility. Staff informed them that neither release detection nor cathodic protection test results had been received.
11. On April 29, 2003, DEQ staff contacted JERM Ltd. requesting copies of the release detection records and the cathodic protection test results for the facility. JERM Ltd. stated that they had not been performing release detection on the tanks and piping. Additionally, the owner indicated that the contractor would be performing a cathodic protection test in the near future.
12. On May 22, 2003, DEQ staff issued NOV No. 03-05-VRO-1 to JERM Ltd., for the apparent continuing violation of the Regulation on USTs #1, 2 & 3 and for apparent violation of 9 VAC 25-590-10 et seq. (UST Financial Responsibility Requirements). The NOV requested that JERM Ltd. respond to the Department by June 2, 2003.
13. On July 11, 2003, DEQ staff received a copy of passing cathodic protection system test results for the facility, performed on July 10, 2003.
14. On July 29, 2003, DEQ staff and JERM Ltd. met to discuss possible resolutions to this matter. During the meeting, DEQ staff received a completed Form 7530 and a copy of UST financial responsibility documentation. Appendix A of the Order provides for confirmation of the acceptability of the UST financial responsibility documentation and for the submittal of additional release detection records.
15. On August 20, 2003, DEQ staff received written correspondence confirming: a) the owners intention to close the USTs as of September 30, 2003; b) the amount of its current indebtedness to its petroleum supplier for upgrades performed on the USTs in 1998; and, c) the material of construction of the USTs.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders JERM Ltd. and JERM Ltd. agrees that:

1. To remedy the violations described above and bring the Facility into compliance with the Regulation, JERM Ltd. shall perform the actions described in Appendix A to the Order.

2. JERM Ltd. shall pay a civil charge of \$3,500.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to ATreasurer of the Commonwealth of Virginia and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

3. JERM Ltd. shall also include its Federal Identification Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of JERM Ltd., for good cause shown by JERM Ltd., or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. This Order is made by agreement and with the consent of the parties and does not constitute a finding, adjudication or admission of violation of any federal, state, or local law, rule, or regulation or any allegations contained herein. For the purpose of this Order only, JERM Ltd. admits the jurisdictional allegations in the Order.
4. JERM Ltd. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. JERM Ltd. declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and she waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any

administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by JERM Ltd. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. JERM Ltd. shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. JERM Ltd. must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. JERM Ltd. shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. The reasons for the delay or noncompliance;
 - b. The projected duration of such delay or noncompliance;
 - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which JERM Ltd. intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and

JERM Ltd. Notwithstanding the foregoing, JERM Ltd. agrees to be bound by any compliance date, which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. JERM Ltd. petitions the Regional Director to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. The Director or the Board terminates this Order in his or its whole discretion upon 30 days written notice to JERM Ltd.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve JERM Ltd. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, JERM Ltd. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by JERM Ltd.:

Date: _____ By: _____
Rhonda Holland
Title: President

Commonwealth of Virginia, City/County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by

_____ of JERM Ltd., a _____, on behalf of the corporation.
(name) (title)

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Date
My commission expires:

Notary Public

Appendix A
JERM Ltd. t/a Northside Market
UST Facility at 911 Front Street, Lovington, VA

For USTs #1, 2 & 3, JERM Ltd. shall:

A. By October 30, 2003:

1. Cease dispensing gasoline from the USTs.
2. Disconnect electrical supply to all dispensers and secure all dispensing nozzles.
3. Have submitted acceptable financial responsibility documentation and a UST notification form 7530 placing the USTs in temporary closure to the DEQ.

B. By November 28, 2003:

1. Remove all petroleum from the USTs.
2. Leave all vent lines open and functioning.
3. Remove all pumps and dispensers associated with the USTs and cap any associated product lines.
4. Secure the fill pipes to the USTs to prevent any unauthorized access.
5. Obtain the necessary building permit and inspections for temporary UST closure from the local building official in accordance with the Virginia Uniform Statewide Building Code. Submit a copy of this to the DEQ.

C. By June 1, 2004:

1. Submit a copy of a signed contract to the DEQ for proper closure of the USTs.

D. By October 1, 2004:

1. Permanently close the USTs in accordance with the requirements of 9 VAC 25-580-320 and 330.
2. Submit required closure documentation for the USTs to the DEQ.